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official capacity or on behalf of the United States shall be paid at rates and in amounts allowable for other purposes under the provisions of 5 U.S.C. 5702-5705 and applicable regulations prescribed thereunder by the Administrator, General Services, and the employing agency. Such payment shall be reduced to the extent that the travel expenses are paid to the employee for his or her appearance by the court, authority, or party which caused the employee to be summoned as a witness in an official capacity on behalf of a party other than the United States.

(d) *Payment and reimbursement*—(1) *Payable by the employing agency.* If an employee serves as a witness, and the case involves the activity in connection with which he or she is employed, the travel expenses are payable from the appropriation of the employing agency. The Comptroller General has defined the extent to which the case must be related to the agency's activity as a condition to the agency's responsibility for payment in 23 Comp. Gen. 47, 49 (1943), which states "the employing agency is required to pay . . . the traveling expenses incurred by the witness only where the information or facts ascertained by the employee as part of his official duties forms the basis of the case, or where the proceeding is predicated upon a law that that agency is required to administer." In 39 Comp. Gen. 1, 2 (1959), the Comptroller General determined that if an employee testifies regarding facts and information he or she acquires in the course of his or her assigned duties, the employing agency is responsible for the payment of the employee's travel expenses. In these instances, the witness appropriation of the Department of Justice is not available for payment of expenses.

(2) *Payable by the Department of Justice.* If an employee appears on behalf of the United States in an unofficial capacity in a judicial proceeding involving the Department of Justice, the employee's travel expenses are payable by the Department of Justice. The employing agency may advance or pay the travel expenses of the employee and later obtain reimbursement from the Department of Justice by submitting an appropriate bill together with a

copy of the approved advance or travel voucher.

(e) *Leave and attendance fee*—(1) *Leave.* An employee is considered to be in official duty status when appearing as a witness in his or her official capacity or on behalf of the United States in an unofficial capacity. An employee is entitled to court leave when he or she appears as a witness in an unofficial capacity not on behalf of the United States, and the United States, the District of Columbia, or a State or local government is a party to the case. An employee must use annual leave or leave without pay to appear as a witness when the United States, the District of Columbia, or a State or local government is not a party.

(2) *Attendance fee.* An employee who appears on behalf of the United States is not entitled to receive an attendance fee. An employee who appears on behalf of a party other than the United States while in official duty status or while on court leave should request an attendance fee from the court, authority, or party which caused the employee to be summoned. Such fee shall be remitted to the employing agency. An employee who must use annual leave or leave without pay to appear as a witness may retain an attendance fee which he or she receives.

§21.3 Aliens.

(a) *Aliens entitled to payment of \$30 per day.* The following aliens are entitled to witness fees and allowances provided in §21.4:

(1) Aliens lawfully admitted for permanent residence (documentary evidence: Form I-151 or Form I-551, Alien Registration Receipt Card);

(2) Aliens lawfully admitted in one of the nonimmigrant categories described in 8 U.S.C. 1101(a)(15) (documentary evidence: unexpired Form I-94, Arrival-Departure Record). But see below §21.3(b);

(3) Aliens admitted as refugees under 8 U.S.C. 1157 and aliens granted asylum under 8 U.S.C. 1158 (documentary evidence: Form I-94, Arrival-Departure Record, indicating admission as refugee under 8 U.S.C. 1157 or granting asylum under 8 U.S.C. 1158, employment authorized);

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(4) Aliens who have rendered themselves amenable to deportation proceedings, but have not admitted deportability or have not been determined to be deportable pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(b) *Aliens entitled to payment of \$1 per day.* An alien who is “excludable” in accordance with 8 U.S.C. 1226, but whose removal is stayed by the Attorney General (in accordance with 8 U.S.C. 1227(d)) because:

(1) The testimony of the alien is necessary on behalf of the United States in the prosecution of offenders against the United States, or

(2) The testimony of the alien is necessary on behalf of an indigent criminal defendant in accordance with Rule 17(b) of the Federal Rules of Criminal Procedures,

is entitled to a \$1 per day witness fee. No other fees and allowances are authorized.

(c) *Aliens not entitled to payment.* An alien who has been paroled into the United States for prosecution pursuant to 8 U.S.C. 1182(d)(5) (documentary evidence: Form I-94, Arrival-Departure Record, Parole Edition), or an alien who has admitted belonging to a class of aliens who are deportable, or an alien who has been determined pursuant to 8 U.S.C. 1252(b) to be deportable (documentary evidence: decision by a Special Inquiry Officer, Board of Immigration Appeals, or court), is prohibited from receiving fees and allowances in accordance with 28 U.S.C. 1821(e).

(d) *Doubtful cases.* If the Immigration and Naturalization Service advises that the alien has admitted deportability, or that he or she was paroled into the United States for prosecution, or that deportation proceedings have been completed against the alien with a result favorable to the Government, no payment under 28 U.S.C. 1821 may be made.

§21.4 Fees and allowances of fact witnesses.

The fees and allowances of fact witnesses, other than those covered by §21.2, attending at any judicial proceeding, shall be as follows:

(a) *Fee.* A witness shall be paid an attendance fee of \$30 per day for each

day’s attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance. However, if both attendance and travel occur on the same day, a witness is entitled to only one fee.

(b) *Allowable transportation expenses.* A witness shall be entitled to transportation expenses based on the means of transportation reasonably utilized (based on the nature, duration, location and distance of travel) and the distance necessarily traveled from and to such witness’ residence by the shortest practical route and the fastest means of transportation available in going to and returning from the place of attendance. Additional costs incurred (including attendance fees and subsistence allowances) because of a slower means of transportation must be justified for consideration.

(1) A witness who travels by regularly scheduled common carrier shall be paid for the actual expenses of transportation at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A witness who travels by privately owned vehicle shall be paid a transportation allowance equal to the mileage allowance paid for official travel of employees of the Federal Government under the provisions of 5 U.S.C. 5704. However, when two or more witnesses travel in the same privately owned vehicle, only the witness incurring the expense shall receive the mileage allowance.

(3) A witness incurring incidental transportation expenses, such as taxi fares between the place of attendance, residence or lodging and the carrier terminals; bridge, road and tunnel tolls; ferry fares; and parking fees shall be paid in full for such expenses. Receipts or other evidence of actual payment are required for *all parking fees* (if available) and all other single items costing more than \$25.

(4) First-class travel by witnesses requires the same justification and approval required for first-class travel by employees of the Federal Government.

(c) *Subsistence allowance.* A witness (other than a witness detained in custody) who is required to be away from